IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Case No. **FAO No. 539 of 1990**

Date of decision: August 30, 2006.

Mohinder Singh. ... Appellants

Versus

General Manager, Punjab Roadways
Depot No. 1, Jalandhar and others ... Respondents.

...

Present: Mr. I.P.S.Doabia, Advocate
for the appellant.

Mr.J.S.Chandail, AAG Panjab

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RANJIT SINGH, J

Mohinder Singh is in appeal against the Award given by Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal') whereby his prayer for award of compensation on account of the injuries suffered by him while travelling in a Bus, was declined.

The facts, in brief, are that Mohinder Singh was travelling in a Panjab Roadways Bus bearing registration no. PUX-3101 on 22.7.1987. At about 9.00 A.M. on the said date, when the bus reached in the vicinity of Village Bassla on Phagwara- Nawanshar Road, a truck approached from the opposite side. The appellant, who was sitting near the window with his arm resting on the window. While the bus and truck crossed each other, the appellant suffered fracture on his arm which he was resting on the window. In this accident, another person Avtar Singh also received similar injuries. The appellant was first kept in the Primary Health Centre, Dhahan and was subsequently referred to C.M.C., Ludhiana, where he remained admitted as an indoor patient. The appellant suffered multiple

fractures on his right arm and had remained under treatment in C.M.C., Ludhiana till 16.9.1987. He claimed to have spent Rs.30,000/- and was still under treatment when he appeared in support of his claim petition filed on 13.1.1988. In this petition, the appellant has sought compensation of Rs.1,00,000/- on account of the injuries suffered by him.

Notice of this petition was given to the respondents including the bus driver, respondent no.3. A joint written statement was filed on behalf of respondents no.1 and 2 whereas respondent no.3, driver of the bus, filed a separate written statement but on similar lines. It was conceded that on 27.7.1987, the bus was driven by respondent no.3. As per the respondents, the bus had been brought to a halt at Bus Stop of Village Bassla. It is at that stage that the truck being driven rashly and negligently came from the opposite direction and while crossing the bus at high speed, struck against the stretched arms of the two occupants of the bus. It was, thus, pleaded that the accident took place on account of the negligence on the part of the truck driver who had caused this accident while in the process of cross the bus. It was also pleaded that the claim petition was bad for non-joinder of proper parties inasmuch as the truck driver had not been joined in the proceedings.

Both the claim petitions filed by Avtar Singh and Mohinder Singh, appellant were tried together. The Tribunal came to the conclusion that this accident took place because of the negligence on the part of the appellant. While so holding, the Tribunal observed that the truck while crossing the bus had not hit the bus. From this it was conveyed that the injury was caused because the arm of the appellant was resting on the window and was protruding out of the bus. Accordingly, it was held that the appellant and the other claimant were themselves negligent/responsible for this accident. The issue relating to the negligence was, as such, decided against the appellant. Having so held, the Tribunal went ahead to determine the quantum of compensation to avoid it being referred back in the event of issue regarding negligence was disturbed by any higher Court. The

Tribunal assessed a sum of Rs.25,000/- as compensation awardable to the appellant in this case.

Mr. I.P.S.Doabia, appearing on behalf of the appellant, has submitted that even if it be accepted that the appellant was sitting with his arm resting on the window, then also the finding of the Tribunal that the accident took place on account of the negligence of the appellant cannot be allowed to be sustained. In support of his submission, he has drawn my attention to two judgments of this Court in the case of **Prem Chand** v. **Harbhajan Singh**, (1984) 86 P.L.R. 459 and **State of Haryana and another** v. **Ram Pal,** (1990-I) PLR 507. In both these cases, the issue involved was identical to the one arising in the present appeal. It has been held by this Court that there is no rule of law which bars a passenger from putting his arm on the window. It was also noticed that this indeed is a very common practice in this part of the country and it is often seen to be done. It was further observed that there was a driver of a motor vehicle owes a duty of exercising care towards persons travelling in it and this duty extends to ensuring that such persons are not put in jeopardy because their arms are resting on the windows. It can otherwise be observed that an injury of thenature and inthe manner that has been caused in this case can result only if the vehicles come dangerously close to each other while crossing. Mere fact that the arms protruding out by inches were injured would show that there was lack of proper care and caution on the part of the drivers indicating culpable negligence on their respective parts. The finding of the Tribunal that the accident took place on account of the negligence on the part of the appellant, as such, cannot be sustained. The said finding is, accordingly, set aside and it is held that this injury was caused due tothe negligence on the part of the bus driver as well.

Now, the question which requires determination is the quantum of compensation that is required to be paid to the appellant. Detailed analysis in regard to the income and the amount spent by the appellant on his treatment has

been made by the Tribunal while deciding Issue No.3. The evidence of Dr. Rajesh Paul, AW/3, Johnson William,AW/2, a Bill Clerk in the Accounts Branch of C.M.C. would clearly show the actual amount spent by the appellant on his treatment and so also the nature of injuries suffered by him. As per the evidence, the appellant received 3 fractures on his right arm and for the treatment of the injuries, he had remained as an indoor patient in C.M.C. for the period 22.7.1987 to 16.9.1987. He had to undergo two operations. It has also come on record that the appellant now cannot properly bend. It is on record that he had spent Rs.9.435/- on his treatment. As per the evidence of Dr. Kahlon, AW/7, the appellant had suffered disability of 40 per cent. Having regard to these factors, compensation awardable was assessed as Rs.25,000/-. This compensation appears to be on the lower side having regard to the nature of injuries and the expenditure incurred by the appellant on his treatment. It is required to be noticed that the appellant has suffered 40 per cent disability in this case. In **R.D.Hattangadi** versus **M/s. Pest Control (India) Private Ltd., (1995-2) PLR 298**, it was held by Supreme Court that " in its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards." Accordingly, I would hold that a sum of Rs.50,000/- (Rupees Fifty thousand) as compensation would meet the ends of justice and is payable to the appellant. He shall also be entitled to interest at the rate of 9 per cent per annum from the date it became due till the date of payment.

Consequently, this appeal is allowed in the terms indicated above.

(RANJIT SINGH)
JUDGE

August 30, 2006

RS